

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NENA V. JONES and U.S. POSTAL SERVICE,
FOX VALLEY P&D CENTER, Aurora, IL

*Docket No. 98-80; Submitted on the Record;
Issued August 4, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant sustained an emotional condition while in the performance of duty.

On July 13 and 18, 1995 appellant, then a 32-year-old multi-purpose letter sorting machine operator, filed claims asserting that she was being harassed by Bonita J. Harris, an acting supervisor. She noted an extremely stressful work environment. When asked by the Office of Workers' Compensation Programs to describe in detail the employment-related conditions or incidents that she believed contributed to her illness, appellant stated that Ms. Harris would always say that she was crazy. Appellant stated that she could never figure out why Ms. Harris was so hard on her. She also stated that she had filed two grievances, one of which was settled, as well as a class action suit. Appellant clarified that she was under psychiatric care for panic attacks and major depression and that this condition arose only when Ms. Harris began to supervise. She also asserted that Ms. Harris always sent her out of her detail assignment in disregard to the chain of command.

The record contains a July 3, 1995 letter from appellant to the plant manager asserting that Ms. Harris harassed her on July 1, 1995 when she asked appellant whether she would like to go to manual, when she moved appellant from console 8 reliever ledger spot to console 10 reliever ledger spot and when she asked appellant whether she could go in the back to help Dale sweep while she, Ms. Harris, finished up. She stated that Ms. Harris continued to harass her, shoved her in the back, grabbed her by the arm and told her "do [not] walk upon on men," which made appellant have to yell to talk to her boss. Appellant stated that Ms. Harris acted as though she had a vendetta against her.

The record contains a grievance settlement dated July 21, 1995. The settlement stated that subject was resolved on the basis that appellant's union had agreed to withdraw her grievance relating to a letter of warning and that management and the union agreed that the letter

issued to appellant on July 17, 1995 was procedurally defective and would be rescinded and not reissued in any other form.

In a statement dated August 18, 1995, appellant asserted that a manager, Mike Kotula, threatened her on or about May 2, 1995 when he stated, "If you file a grievance on A/Supervisor Bonita Harris, I am going to make it very difficult for you."

Appellant submitted psychiatric opinion evidence supporting that her current depression was related to a pending court case from work as well as stress from work. Other medical reports indicated that appellant had a conflict with a work situation and a case pending. She related that she felt that she was under much scrutiny and stress at work because of the case. Appellant stated that she was being harassed at work and that they were trying to get her to resign by giving her a lot of pressure. A form report indicated with an affirmative mark that appellant's present condition was due to the injury for which compensation was claimed.

In a decision dated February 21, 1996, the Office rejected appellant's claim on the grounds that the evidence failed to demonstrate that her emotional condition arose out of the course of her federal employment.

Appellant requested an oral hearing before an Office hearing representative. Her attorney asserted that Ms. Harris had called appellant a liar and had stated that appellant was crazy and stupid. He asserted that on or about May 22, 1995 Ms. Harris shoved appellant, resulting in a grievance. He asserted that on or about June 25, 1995 Ms. Harris violated appellant's seniority rights when she pulled appellant from the letter sorting machine and sent to work manual cases or the flat sorter. This resulted in a second grievance. A third grievance arose when Ms. Harris harassed appellant verbally and humiliated her in front of her coworkers on or about July 2, 1995, calling her crazy and stupid and repeatedly requesting that she return to her machine.

The Office received a response from the employing establishment concerning the accuracy of appellant's allegations, but the supervisor who responded advised that he had insufficient information to make a decision on the matter or to concur with appellant's allegations. The supervisor stated that he was unaware of any conflicts.

In a decision dated July 3, 1997, the Office affirmed its February 21, 1996 decision.

The Board finds that the evidence of record fails to establish that appellant sustained an emotional condition while in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.¹ An employee's emotional reaction to an administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

afford coverage.² Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.³

Although appellant has asserted that she was abused and harassed by Ms. Harris, she has submitted no evidence corroborating her various assertions. The record contains no statements from witnesses to support that Ms. Harris called appellant a liar or called her crazy or stupid, as alleged. There is no corroborating evidence to support that Ms. Harris shoved appellant or that she violated appellant's seniority rights, as alleged. Nor is there evidence to support appellant's assertion that Mr. Kotula, a manager, had threatened her. Although error or abuse by a supervisor or manager may be compensable if substantiated by the factual evidence of record, appellant has failed to establish a factual basis for her claim by supporting her allegations with probative and reliable evidence, with one exception.

The record does contain a grievance settlement agreement dated July 21, 1995. Settlement agreements are typically entered into without admissions of guilt or wrongdoing and without prejudice to either party, but the resolution of this particular grievance unequivocally shows error by the employing establishment in an administrative action. The settlement states that both parties agree that the letter of warning issued to appellant on July 17, 1995 was procedurally defective and would be rescinded and not reissued in any other form. Given the acknowledgment of this error by the employing establishment, the Board finds that the settlement constitutes sufficient evidence to establish a compensable factor of employment.⁴

It is not enough, however, for the factual record to substantiate a compensable factor of employment. The medical evidence must explain how this particular factor of employment caused or contributed to appellant's diagnosed major depression and panic attacks. Causal relationship is a medical issue,⁵ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's opinion on whether there is a causal relationship between the claimant's diagnosed condition and the compensable factors of employment. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific compensable factors of employment.⁶

² *Margreate Lublin*, 44 ECAB 945 (1993).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ See *Thomas D. McEuen*, 42 ECAB 566 (1991) (finding a compensable factor of employment where the supervisors used an incorrect standard in preparing the claimant's prospective performance rating, an error acknowledged by the employing establishment).

⁵ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁶ *Victor J. Woodhams*, 41 ECAB 345 (1989).

The medical evidence submitted in this case is generally supportive of an employment nexus: There are references to stress from work, a conflict with a work situation and a pending court case, presumably the class action suit to which appellant referred. These references are too vague, however, to demonstrate that the physician's opinion is based on an accurate factual history.⁷ Further, the medical evidence lacks the well-reasoned medical explanation necessary to demonstrate how the procedural defect in the July 17, 1995 letter of warning caused or contributed to appellant's diagnosed psychiatric condition. The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁸ Appellant's burden includes the necessity of furnishing an affirmative opinion from a physician who supports his or her conclusion with sound medical reasoning.

As the factual evidence substantiates a single compensable factor of employment and as the medical evidence is of little probative value in establishing a causal relationship between this compensable factor of employment and appellant's diagnosed psychiatric condition, the Board finds that appellant has not met her burden of proof.

The July 3, 1997 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Dated, Washington, D.C.
August 4, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁷ *Kathrine W. Brown*, 10 ECAB 618 (1959) (finding that a physician's report was insufficient to establish causal relationship in part because he referred to job insecurity with no recital of circumstances).

⁸ *E.g., Lillian M. Jones*, 34 ECAB 379 (1982).